

REMARKS

Claims 1-4 and 6 are now pending, with claim 1 being the only independent claim. Claim 5 has been canceled. Independent claim 1 has been amended to incorporate the subject matter of canceled dependent claim 5. No new matter has been added. Reconsideration of the above-identified application, in view of the following amendment and remarks, is respectfully requested.

Claims 1, 2, 4, 6 and 7 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,974,570 ("*Szwargulski*").

Claims 1 and 2 stand rejected under 35 U.S.C. §102(b) as being anticipated by, or in the alternative, under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 6,002,328 ("*Wallrafen*") in view of U.S. Patent No. 6,488,476 ("*Eck*") and U.S. Patent No. 5,396,872 ("*Rüger*").

Claim 3, 5, 8 and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Wallrafen* in view of *Eck* and *Rüger*. Claim 8 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Szwargulski* in view of *Eck* and *Rüger*. For the following reasons, reconsideration and withdrawal of these rejections are respectfully requested.

Independent claim 1 has been amended to incorporate the subject matter of dependent claim 5 (now canceled). Thus, independent claim 1 recites, *inter alia*, "an annular second chamber surrounding and connected to the first chamber via a throttle valve". The Examiner-cited art fails to teach or suggest *at least* this limitation.

Rejection in view of *Szwargulski*

The Examiner (at pg. 3 of the Final Office Action) asserts that the container 27 of *Szwargulski* (which the Examiner calls applicants' claimed second chamber) is manufactured integrally with what the container side wall 33 (which the Examiner calls applicants' claimed baffles), which limitations were previously cited in dependent claim 5 (now canceled).

Szwargulski relates to a "vehicle fuel pumping unit wherein a reserve fuel supply container is located within the fuel tank to supply liquid fuel to a motor-operated pump when the tank is nearly empty" (see Abstract, lines 1-4). *Szwargulski* depicts a container 27 in which a fuel pump unit is arranged (see Fig. 2 of *Szwargulski*). *Szwargulski* fails to teach or suggest that the container 27 depicted in Fig. 2 is "an annular second chamber surrounding and connected to the first chamber via a throttle valve", as recited in now amended independent claim 1. Independent claim 1 is thus patentable over *Szwargulski* for *at least* this reason. Reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b) are therefore in order, and a notice to that effect is respectfully requested.

Rejections in view of *Wallrafen, Eck, and Rügen*

The Examiner (at pgs. 5-6 of the Final Office Action) asserts that:

Wallrafen ... teaches a second chamber 18 fixed to a fill cup 2 in the shape of a box. Change the shape of the second chamber so that it formed an annular chamber around the first chamber defined by a fill cup would require a change in the shape of the second chamber. A change in the form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results.

Applicants disagree with the Examiner's assertion. Independent claim 1 now recites that the annular second chamber surrounds and is connected to the first chamber via a throttle valve. Thus, the Examiner's proposed modification of *Wallrafen* requires more than a mere change in

form or shape. The Examiner's assertion that to change the shape of the square box depicted in Fig. 1 of *Wallrafen* would be routine or within the level of ordinary skill in the art is flawed, and references *In re Daiby* and *In re Seid* in support of his conclusion. However, these references are not applicable. The presently claimed annular record chamber is not an ornamental design. Accordingly, the holding of *In re Seid* does not apply. Furthermore, there is criticality associated with the claims arrangement as described at page 2, lines 29-33 of the application as filed. Thus, *In re Daiby* is also not applicable (see, e.g., MPEP §§2144.04). *Wallrafen* teaches a second chamber 18 fixed to a fill cup 2 in the shape of a box. It is clear that the box of *Wallrafen* is not annular, nor does this box surround a first chamber. Therefore, even if the shape of the second chamber 18 is changed in the manner asserted by the Examiner (which applicants do not concede), this chamber still fails to surround the first chamber as required by now amended independent claim 1.

Applicants' claimed invention is directed to a single feed unit. The claimed feed unit includes several chambers. Nevertheless, only a single feed unit is claimed, where the feed unit is arranged in a fuel tank. *Wallrafen*, in contrast, discloses several units, where each unit requires a separate device to achieve the arrangement in the fuel tank. Moreover, the *Wallrafen* units require a connection between each unit. Independent claim 1 is patentable over *Wallrafen* because there is no teaching or suggestion in *Wallrafen* of "an annular second chamber surrounding and connected to the first chamber via a throttle valve".

Independent claim 1 is therefore patentable over *Wallrafen* under 35 U.S.C. §102(b), and a notice to that effect is respectfully requested.

The Examiner at (pg. 5 of the Final Office Action) has acknowledged that the *Wallrafen* arrangement fails to show a bottom valve. According to the Examiner, *Wallrafen* is silent

regarding details of a pump unit 3 that is disposed within a chamber surrounded by a fill cup 2 having a valve on a bottom wall, and cites *Eck* and/or *Rüger* to provide this feature.

Eck relates to “a fuel feed unit for a motor vehicle, with at least one fuel pump fastened to a holding part and intended for sucking in fuel from a baffle arranged in the bottom region of a fuel tank, and with a suction jet pump provided for feeding fuel out of the fuel tank into the baffle and connected to the fuel pump via a supply line” (see col. 1, lines 5-11). The sole figure of *Eck* depicts a baffle 2. A holding part 4 is arranged inside this baffle 2. In addition, a fuel pump 5 draws fuel out of the holding part 4. However, the arrangement of *Eck* cannot be configured to meet the expressly-recited limitation of now amended independent claim 1, i.e., “an annular second chamber surrounding and connected to the first chamber via a throttle valve”. Thus, the combination of *Wallrafen* and *Eck* fails to disclose the above-recited limitations of independent claim 1.

Rüger relates to “a fuel tank serving to provide fuel to the internal combustion engine of a motor vehicle” (see Abstract). *Rüger* (col. 3, lines 32-36) explains that “[d]ue to the check valve 76, the suction side 19 of the fuel pump 18 is already supplied with a small amount of fuel when first filling the tank or after the tank has run dry, so that the internal combustion engine can be started”. *Rüger* also fails to teach or suggest “an annular second chamber surrounding and connected to the first chamber via a throttle valve”, as recited in now amended independent claim 1. Thus, the combination of *Wallrafen*, *Eck*, and *Rüger* fails to disclose the above-recited limitations of independent claim 1.

In view of the foregoing, independent claim 1 is patentable over any combination of *Szwargulski*, *Wallrafen*, *Eck* and/or *Rüger*. Reconsideration and withdrawal of all the rejections

under 35 U.S.C. §102(b) and §103(a) are therefore in order, and a notice to that effect is respectfully requested.

In view of the patentability of independent claim 1, dependent claims 2-4 and 6-9 are also patentable over the prior art for the reasons set forth above, as well as for the additional recitations contained therein.

Based on the foregoing amendments and remarks, this application is in condition for allowance. Early passage of this case to issue is respectfully requested.

It is believed that no fees or charges are required at this time in connection with the present application. However, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,
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